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Nos. 83-812 and 83-929

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

WALLACE, *et al.*,
Appellants
v.
JAFFREE, *et al.*,
Appellees
and
SMITH, *et al.*,
Appellants
v.
JAFFREE, *et al.*,
Appellees

Appeal from the United States Court of Appeals for the Eleventh Circuit

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JOINT APPENDIX

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JOINT APPENDIX

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

May 28, 1982—Plaintiff Jaffree's Original Complaint filed in U.S. District Court for the Southern District of Alabama.

June 4, 1982—Plaintiff's Amended Complaint filed with Class Action Allegation.

June 25, 1982—Answer of Defendants Mobile County School Board, School Board Members and Named Teachers filed jointly.

June 30, 1982—Plaintiff's Second Amended Complaint adding the Governor, Attorney General, the State Superintendent and Members of the State Board of Education.

July 6, 1982—Mobile County School Board's Answer Amended Complaint.

July 12, 1982—Mobile County School Board's Answer to Second Amended Complaint.

July 15, 1982—Plaintiff's Motion for a Temporary Restraining Order.

July 27, 1982—Answer of Alabama State Board of Education.

July 28, 1982—Plaintiff's Motion for Summary of Judgment.

July 28, 1982—Governor James' Answer.

July 28, 1982—Governor James' Motion to Dismiss.

July 29, 1982—Mobile County School Board's Amended Answer.

July 30, 1982—Motion of Douglas Smith, et al, to Intervene.

August 2, 1982—Hearing on Plaintiff's Request for Preliminary Injunction.

August 2, 1982—Issues bifurcated into separate cases, a case against the State (82-0792-H) and a case against the Mobile County School Board (82-0554-H).

November 15, 1982—Trial on the Merits in 82-0554-H.

January 14, 1983—Court Opinions and Judgments in 82-0554-H and 82-0792-H.

January 17, 1983—Plaintiff's Notice of Appeal.

May 12, 1983—Opinion and Judgment of the Court of Appeals for the Eleventh Circuit.

August 15, 1983—Motion by Rehearing En Banc denied by the Court of Appeals for the Eleventh Circuit.

October 14, 1983—Injunction by the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Filed May 28, 1982]

Civil Action No. 82-0554-H

ISHMAEL JAFFREE; JAMAEL AAKKI JAFFREE, MAKEBA GREEN, and CHIOKE SALEEM JAFFREE, infants, by and through their best of friend and father, ISHMAEL JAFFREE,

Plaintiffs,

vs.

THE BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY; DAN C. ALEXANDER, DR. NORMAN BERGER, HIRAM BOSARGE, NORMAN G. COX, RUTH F. DRAGO, and DR. ROBERT GILLIARD, in their official capacities as members of the Board of School Commissioners of Mobile County; DR. ABE L. HAMMONS, in his official capacity as Superintendent of the Board of Education of Mobile County; ANNIE BELL PHILLIPS, individually and in her official capacity as principal of MORNINGSIDE ELEMENTARY SCHOOL; JULIA GREEN, individually and in her official capacity as a teacher at MORNINGSIDE ELEMENTARY SCHOOL; BETTY LEE, individually and in her official capacity as principal of E.R. DICKSON ELEMENTARY SCHOOL; CHARLENE BOYD, individually and in her official capacity as a teacher at E.R. DICKSON ELEMENTARY SCHOOL; EMMA REED, individually and in her official capacity as principal of CRAIGHEAD ELEMENTARY SCHOOL; PIXIE ALEXANDER, individually and in her official capacity as a teacher at CRAIGHEAD ELEMENTARY SCHOOL;

Defendants.

VERIFIED COMPLAINT

Preliminary Statement

Plaintiffs bring this action seeking principally a declaratory judgment and an injunction restraining the Defendants and each of them from maintaining or allowing the maintenance of regular religious prayer services or other forms of religious observances in the Mobile County Public Schools in violation of the First Amendment and as made applicable to states by the Fourteenth Amendment to the United States Constitution. Plaintiffs further seek to enjoin Defendant REED and Defendant PIXIE ALEXANDER from maintaining or allowing the maintenance of courses of instruction which have as their primary purpose the furtherance of the establishment of a religion in violation of the First Amendment to the United States Constitution.

I.

JURISDICTION

1. This cause of action arises under the First and Fourteenth Amendments to the United States Constitution and pursuant to Section 1983 and Section 1988, Title 42 of the United States Code. The jurisdiction of this Court is evoked pursuant to Title 28, Sections 1343(3) and (4), and Sections 2201 and 2202 of the United States Code.

II.

PLAINTIFFS

2. Plaintiff, ISHMAEL JAFFREE, is a citizen of the United States, a resident of Mobile County, Alabama, and is over the age of twenty-one (21) years. ISHMAEL JAFFREE is the father of Plaintiffs JAMAEL AAKKI JAFFREE, MAKEBA GREEN and CHIOKE SALEEM JAFFREE, who are all minor children enrolled in the Public School System of Mobile County, Alabama.

3. Plaintiff, JAMAEL AAKKI JAFFREE, is a minor child enrolled in the second grade of a Special Education Class at MORNINGSIDE ELEMENTARY SCHOOL in Mobile County, Alabama.

4. Plaintiff, MAKEBA GREEN, is a minor child enrolled in the second grade at CRAIGHEAD ELEMENTARY SCHOOL located in Mobile County, Alabama.

5. Plaintiff, CHIOKE SALEEM JAFFREE, is a minor child enrolled in the Kindergarten class at E.R. DICKSON ELEMENTARY SCHOOL.

III.

DEFENDANTS

6. Defendant, BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, is the public body charged by the laws of the State of Alabama with administering the system of public instruction for Mobile County, Alabama.

7. Defendants, DAN C. ALEXANDER, BERGER, BOSARGE, COX, DRAGO, and GILLIARD, are each sued in their official capacities as members of the BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ALABAMA.

8. Defendant, DR. ABE L. HAMMONS, is sued in his official capacity as Superintendent of Education for Mobile County, Alabama.

9. Defendant, ANNIE BELL PHILLIPS, is the principal of MORNINGSIDE ELEMENTARY SCHOOL and as such she is principally responsible for the day-to-day operation of the school and has direct supervisory responsibility for the teachers and their support staff. Defendant PHILLIPS is sued both individually and in her official capacity as principal of MORNINGSIDE ELEMENTARY SCHOOL.

10. Defendant, BETTY LEE, is the principal of E.R. DICKSON ELEMENTARY SCHOOL, and as such she is principally responsible for the day-to-day operation of the school and has direct supervisory responsibility for the teachers and their support staff. Defendant LEE is sued both individually and in her official capacity as principal of E.R. DICKSON ELEMENTARY SCHOOL.

11. Defendant, EMMA REED, is the principal of CRAIGHEAD ELEMENTARY SCHOOL, and as such she is principally responsible for the day-to-day operation of the school and has direct supervisory responsibility for the teachers and their support staff. Defendant REED is sued both individually and in her official capacity as principal of CRAIGHEAD ELEMENTARY SCHOOL.

12. Defendant, JULIA GREEN, is the teacher for the class in which Plaintiff JAMAEL AAKKI JAFFREE is enrolled. This Defendant teaches a class at MORNINGSIDE ELEMENTARY SCHOOL for students with special learning disabilities and has supervisory responsibilities over two (2) teacher's aides assigned to this class. Defendant GREEN and/or her aides have lead and continue to lead the students in devotional services. The second grade students are expected to respond in unison twice daily to "grace" prior to breakfast and prior to lunch. Defendant GREEN is sued both individually and in her official capacity as a teacher at MORNINGSIDE ELEMENTARY SCHOOL.

13. Defendant, CHARLENE BOYD, is a teacher for the class in which Plaintiff, CHIOKE SALEEM JAFFREE, is enrolled. This Defendant teaches a Kindergarten class at E.R. DICKSON ELEMENTARY SCHOOL. Defendant BOYD leads her class in unison in chanting a religiously based devotional grace prior to eating lunch. Defendant BOYD is sued both individually and in her official capacity as a teacher at E.R. DICKSON ELEMENTARY SCHOOL.

14. Defendant, PIXIE ALEXANDER, is a teacher for the class in which Plaintiff, MAKEBA GREEN, is enrolled. This Defendant is assigned to a second grade class at CRAIGHEAD ELEMENTARY SCHOOL. Defendant, PIXIE ALEXANDER, in addition to providing her class with instructional materials which have the effect of furthering a belief in the establishment of a Judeo-Christian religion also leads them in a devotional chant prior to the lunchbreak. Defendant, PIXIE ALEXANDER, is sued both individually and in her official capacity as a teacher at CRAIGHEAD ELEMENTARY SCHOOL.

IV.

STATEMENT OF THE CASE

15. Plaintiff, JAMAEL AAKKI JAFFREE, age 9, and Plaintiff, CHIOKE SALEEM JAFFREE, age 6, have been subjected to various acts of religious indoctrination orchestrated by Defendant GREEN and Defendant BOYD and their support staff from the beginning of the school year in September, 1981, and continuing.

16. Plaintiff, MAKEBA GREEN, has been exposed to a daily ritual of religious indoctrination by Defendant, PIXIE ALEXANDER, since this Plaintiff became matriculated into the Mobile County Public School System during the month of April, 1982.

17. Plaintiffs CHIOKE SALEEM JAFFREE and MAKEBA GREEN have been and continue to be exposed to a public classroom setting where the teacher on a daily basis leads the class in saying the following prayer in unison:

> "God is good, God is great, and we thank *HIM* for this food." (Emphasis supplied.)

18. Plaintiff JAMAEL AAKKI JAFFREE, on a daily basis, must line up with the rest of his classmates for lunch and prior to their departure to the lunchroom they

are lead by Defendant GREEN or a member of her support staff in singing a religiously based song from a book entitled *This is Music*. The song which the children sing contains several references to a deity.

19. All of the minor Plaintiffs are exposed to ostracism from their peer group class members if they do not participate in these daily devotional activities.

20. On numerous occasions, the minor Plaintiffs have complained to their best friend and father, ISHMAEL JAFFREE, that their respective teachers lead them in devotional prayer prior to breakfast and lunch.

21. On or about February 1, 1982, Plaintiff, ISHMAEL JAFFREE, wrote a letter to Defendant BOYD, requesting that she cease and desist from conducting religious observances in the form of "grace" in the classroom where his minor son, CHIOKE, is enrolled. This Plaintiff further communicated with Defendant BOYD's immediate supervisor, Defendant LEE, and requested that these devotional observances be stopped.

22. Defendant LEE, in response to Plaintiff ISHMAEL JAFFREE's request, informed him that Defendant BOYD's grace chants had been approved by someone in the Superintendent's Office. Defendant LEE further informed this Plaintiff that as long as the saying of "grace" was voluntary and the students were not forced to participate, it was lawful.

23. In total and willful disregard of Plaintiff, ISHMAEL JAFFREE's, written and oral complaints, the Defendants knowingly continued to conduct religious observances in the classroom where the minor Plaintiffs are enrolled.

24. On May 10, 1982, at approximately 11:30 A.M., Plaintiff ISHMAEL JAFFREE, visited MORNINGSIDE ELEMENTARY SCHOOL to discuss his son, JAMAEL AAKKI JAFFREE's, academic performance with Defendant, GREEN. While in the classroom Mr. Jaffree

personally observed the class being lead in a devotional song by one of Defendant GREEN's support staff. This activity had the support, if not the actual encouragement, of Defendant GREEN.

25. On May 10, 1982, Plaintiff, ISHMAEL JAFFREE, wrote a letter to Defendant ABE L. HAMMONS, in which he again formally complained of the prayer sessions being orchestrated by Defendants GREEN, BOYD, and PIXIE ALEXANDER. Copies of these letters were sent to Defendants PHILLIPS, LEE, and REED. A true and correct copy of this letter is attached and marked at Attachment "A". Plaintiff, ISHMAEL JAFFREE, subsequent to the mailing of the May 10, 1982 letter contacted Defendants PHILLIPS, LEE, and REED, and each acknowledged receipt of the letter. Notwithstanding their receipt of this letter, and in willful disregard thereof, the prayer activities complained of continued and to-date still continue.

26. Defendant, ABE L. HAMMONS, Superintendent of the Board of Education of Mobile County, has taken no action to stop the religiously based activities of Defendants GREEN, BOYD, and PIXIE ALEXANDER.

27. On May 27, 1982, Plaintiff, ISHMAEL JAFFREE, attempted to discuss the matter of his daughter's exposure to religious indoctrination with Defendant REED. In total and complete disregard of his concerns, Defendant REED refused to discuss the matter with Mr. Jaffree and stated that the matter was in the hands of Defendant, ABE L. HAMMONS, and that she wasn't to be consulted about it.

28. On information and belief, Plaintiffs aver that Defendant PIXIE ALEXANDER uses several books of a religious nature to teach her class about religion and to encourage their belief therein.

29. Plaintiffs JAMAEL AAKKI JAFFREE, CHIOKE SALEEM JAFFREE and MAKEBA GREEN, all have

suffered and continue to suffer severe emotional distress from being forced to participate, via peer group pressure, in devotional observances orchestrated by the Defendants. This is expressly true since their father has assured each of them that prayer in school is unlawful and yet, they are exposed to it on a daily basis. These Plaintiffs must either acquiesce in something in which they may not believe or endure the humiliation of their classmates.

30. Plaintiff, ISHMAEL JAFFREE, has suffered and continues to suffer severe emotional and mental anguish by having his children exposed to Judeo-Christian religious doctrines in violation of the establishment clause of the First Amendment of the United States Constitution.

31. Defendants have willfully, maliciously and wantonly disregarded Plaintiffs' constitutional rights by engaging in activities designed to foster a belief in religion.

32. Defendants have willfully, maliciously and wantonly caused the Plaintiffs to suffer great mental and emotional distress by failing or otherwise refusing to cease and desist from engaging in activities designed to foster a belief in religion.

V.

CLAIM OF RELIEF

33. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 32 above, as though fully set out herein.

34. Defendants' acts of encouraging students to chant in unison phrases containing religiously based language constitute a violation of the establishment clause of the First Amendment of the United States Constitution and Title 42, Section 1983 of the United States Code.

35. Defendant, PIXIE ALEXANDER's, act of reading to her class from instructional material designed to

foster a belief in religion constitutes a violation of the establishment clause of the United States Constitution and Title 42, Section 1983 of the United States Code.

VI.

PRAYER FOR RELIEF

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiffs respectfully ask this Court to grant the following relief:

a. That the Court accept jurisdiction over this cause;

b. That the Court issue a judgment declaring that the Defendants, by leading the children in their class in songs, grace, or chants which further a belief in religion are engaging in activities which are unconstitutional and in violation of the First Amendment of the United States Constitution;

c. That the Court issue a judgment declaring that Defendants, by reading from instructional materials whose contents further a belief in religion are engaging in activities which are unconstitutional and in violation of the First Amendment of the United States Constitution;

d. That afer a hearing, this Court issue a permanent injunction against the Defendants, their agents, assigns, successors in office, attorneys, and all others actively participating with them from continuing devotional services in the form of songs, chants, or the saying of "grace" and from engaging in any other activities designed to encourage a belief in religion;

e. That after a hearing, this Court issue a permanent injunction against the Defendants, their agents, assigns, successors in office, attorneys and all others actively participating with them from continuing to teach from instructional materials designed to encourage a belief in religion;

f. That the Court award costs and reasonable attorney's fees;

g. That the Court award the Plaintiffs the sum of $15,000.00 as compensatory damages for their mental suffering;

h. That the Court award Plaintiffs $100,000.00 as punitive damages; and

i. That the Court award the Plaintiffs such other, further and different relief as the Court may deem necessary or appropriate.

Respectfully submitted on this the 28th day of May, 1982.

VERIFICATION

Appeared before me, a Notary Public, in and for said State and County, ISHMAEL JAFFREE, who being by me first duly sworn, deposes and says that he has read the foregoing Verified Complaint and same is true and correct to the best of his knowledge and belief.

/s/ Ishmael Jaffree
ISHMAEL JAFFREE

Sworn to and subscribed to before me on this the 28th day of May, 1982.

/s/ Dorothy L. Brewer
Notary Public,
State at Large

My Commission Expires: 4/9/86.

/s/ Ronnie L. WILLIAMS
RONNIE L. WILLIAMS
Attorney for Plaintiff
103 Dauphin Street—
Suite 716
Mobile, Alabama 36602
(205) 432-6985

ISHMAEL JAFFREE
1705 Marengo Drive
Mobile, Alabama 36605

May 10, 1982

Dr. Abe L. Hammons
Superintendent
Mobile County Public School System
Post Office Box 1327
Mobile, Alabama 36633

Dr. Dr. Hammons:

I am the parent of three (3) minor children who are presently matriculated in the Mobile County Public School System, of which you have direct supervision. The children and the schools they attend are, respectively: Jamael Aakki Jaffree, Morningside Elementary School; Makeba Green, Craighead Elementary School[;] and Chioke Saleem Jaffree, E. R. Dickson Elementary School. Each of my children has, both on separate occasions and collectively, complained to me that a form of subtle coercion (my language, not theirs) has been used against them to induce them to participate in *voluntary* school prayer in the form of either a chant or saying grace.

Assuming argumentum that any of the complaints are meritorious, then a violation of the First Amendment, Freedom of Religion Clause of the U.S. Constitution has occurred. In an unbroken line of cases decided by the U.S. Supreme Court (cites will be furnished upon request), the Court has stated emphatically that the school system is not a proper place for *voluntary* school prayer initiated or orchestrated by an agent, servant, or employee of the State. In the realm of "public education", where you have the coercive presence of an instructor, acting in *locus parenti*, and where you have group dynamics at play, there can be no such creature as "volun-

tary prayer" or the voluntary observance of or recognition of a deity. The urge to conform to expected behavior is overwhelming. It would be asking too much of any child (especially one of tender years) to overcome or subdue such pressure.

It matters not what you or I may personally feel about the merits or demerits of religious education. The fact, simply put, is that the school room (public) is not the proper place for such instruction. The separation of church and State demands no less. Further, the First Amendment clause of the United States Constitution implicitly provides that in addition to freedom of religion, its citizens shall be free *from* religion where such religion is pursuant to an act of the State. If the School Board feels that *theology* is a proper subject to be included in the classroom curriculum, not matter how briefly it is treated, then in fairness, the scope of such theology should not be limited to Judeo-Christian doctrines. The curriculum should include, but certainly not be limited to, instruction in atheism, agnosticism, buddhism, existentialism and yes, (swallow hard) even communism. This way, the students will at least have a broad perspective on different forms of theological and philosophical thought and hopefully develop a broader educational perspective. Of course, no public school, especially in the bible-toting antebellum South, would fathom such a curriculum. Therefore, it is best that the Mobile County Public School System leave theology in the hands of those best able to teach it and take it cut of the hands of instructors—a few of whom, as we well know, have difficulty imparting instructional materials which are within their providence. None of my children's teachers are intended to be within this circular group.

I am looking forward to hearing from you soon concerning this matter. I am hopeful that this issue can be resolved informally. However, I am prepared to provide

my children with the full panoply of rights granted to them by the United States Constitution.

Sincerely,

/s/ Ishmael Jaffree
ISHMAEL JAFFREE
Attorney-at-Law

IJ.hs

cc: The American Civil Liberties Union
Principal, E. R. Dickson Elementary School
Principal, Erwin Craighead Elementary School
Principal, Morningside Elementary School

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title Omitted]

[Filed Jun. 4, 1982]

AMENDED COMPLAINT

COME NOW, the Plaintiffs, who amend their Complaint as a matter of course pursuant to Rule 15(a) of the FEDERAL RULES OF CIVIL PROCEDURE. Plaintiffs seek to amend their Complaint to bring this action not only for themselves, but alson [*sic*] on behalf of all others similarly situated. The Complaint shall be amended as follows:

1. The style of the case is amended to read:

Civil Action No. 82-0554-H

ISHMAEL JAFFREE, *et al.*, on their own behalf and on behalf of all others similarly situated,
Plaintiffs,

vs.

THE BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNY, *et al.*,
Defendants.

2. Subsection II. of Plaintiff's original Complaint is amended as follows:

II.

CLASS ACTION ALLEGATIONS

5. (a) In addition to their individual claims, Plaintiffs bring this suit as a class action pursuant to Rules 23(a) and (b)(2) of the FEDERAL RULES

OF CIVIL PROCEDURE on behalf of all students currently enrolled in the Mobile County Public School System and those who will, in the future, be enrolled in the Mobile County Public School System, who, during the normal school hours, have been, are being, or will be exposed to religious prayer, religious chants, religious songs, or other forms of religious observances initiated by or, with the approval of, the Defendants in violation of the First Amendment to the United States Constitution.

5. (b) The class is so numerous that joinder of all members is impractical and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Each of the named minor plaintiffs are enrolled in a class which consists of approximately thirty (30) students. Additionally, the Defendants, BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, have direct responsibility for over fifty (50) Elementary Schools, fifteen (15) Middle Schools, and fifteen (15) High Schools within Mobile County, Alabama. Each of these schools has numerous classrooms, each consisting convservatively [*sic*] of fifteen (15) or more students. The exact size of the class is not now know [*sic*] to Plaintiffs.

5. (c) There are questions of fact and law which are common to the Class and which predominate over any questions affecting only the individual named Plaintiffs, *i.e.*, whether or not the Defendants' acts providing religiously basec [*sic*] chants, songs, grace recitations or other forms of religious observances during the normal school hours are in violation of the First Amendment of the United States as made applicable to the States by the Fourteenth Amendment to the United States Constitution.

5. (d) The claims of the Plaintiffs are typical of the claims of the Class and Plaintiffs will fairly and

adequately protect the interest of the Class. Plaintiffs can and do undertake honorably to represent the Class.

5. (e) In addition, the parties opposing the Class have acted and continue to act on grounds generally applicable to the Class as a whole (*i.e.*, providing religious observances as part of the normal classroom activity), thereby making appropriate final injunctive relief or, corresponding declaratory relief with respect to the Class as a whole.

3. Subsection IV, of the Plaintiffs' original Complaint is amended by adding Paragraphs 32 (a) and (b), which shall read as follows:

32. (a) On information and belief, Plaintiff aver that the complained of activity, *i.e.*, religious observances initiated by teachers, exists throughout the entire Mobile County School System with the knowledge of and with the support of the BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY and the defendant ABE HAMMONS.

33. (b) On information and belief, Plaintiffs aver that the Defendants, BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, and Defendant, ABE HAMMONS, have a policy, either written or unwritten, which permits teacher employed by the Board of Education of Mobile County, to conduct religious activities in the classroom so long as individual students are not compelled to attend.

4. Subsection VI, of Plaintiffs' original Complaint is amended as follows:

(j) That as soon as practical this matter be certified as a Class, and allow the Plaintiffs to proceed on behalf of the Class as a whole.

(k) That this Court issue a permanent injunction against the BOARD OF SCHOOL COMMISSION-

ERS OF MOBILE COUNTY and Dr. ABE L. HAMMONS, their agents, assigns, successors in office, attorneys and all others actively participating with them from permitting devotional services in the form of songs, chants, the saying of grace, and from engaging in any other forms of religious observances designed to or have the primary effect of encouraging a belief in religion in violation of the First Amendment of the United States Constitution.

(l) That this Court issue an Order against the BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY and Dr. ABE L. HAMMONS, requiring them to take affirmative steps to notify all teachers employed by the Board of Education of Mobile County that devotional services in the form of songs, chants, the saying of grace, and/or any other activities designed to or have the primary effect of encouraging a belief in religion shall be in violation of the First Amendment of the United States Constitution and in violation of the School Board's policies.

(m) That this Court issue such other appropriate and necessary declaratory and injunctive relief with respect to the Class as a whole as it deems justified.

Respectfully submitted this the 4th day of June 1982.

/s/ Ronnie L. Williams
RONNIE L. WILLIAMS
Attorney for Plaintiffs
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Mobile, Alabama 36602
205/432-6985

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title Omitted]

[Filed Jun. 30, 1982]

SECOND AMENDED COMPLAINT

COME NOW, the Plaintiffs, who proffer this as their Second Amended Complaint. Unless expressly provided herein, this amendment is intended to augment, not supplant, the averments contained in Plaintiffs' original and first amended complaint.

Paragraphs 1 through 35 and a through i of Plaintiffs' original complaint and paragraphs 1 through 4 of Plaintiffs' first amended complaint are realleged, repled and repeated as though fully set out herein.

1. The style of the case is further amended as follows:

ISHMAEL JAFFREE; JAMAEL AAKKI JAFFREE, MAKEBA GREEN, and CHIOKE SALEEM JAFFREE, infants, by and through their best of friend and father, ISHMAEL JAFFREE,
Plaintiffs,

vs.

FOB JAMES, in his official capacities as Governor of the State of Alabama and ex officio member of the State Board of Education; CHARLES GRADDICK, in his official capacity as Attorney General for the State of Alabama; JOHN TYSON, JR., RON CREEL, S.A. CHERRY, RALPH HIGGINBOTHAM, VICTOR P. POOLE, HAROLD C. MARTIN, JAMES B. ALLEN, JR., and ROSCOE ROBERTS, JR., in their official ca ac-

ities as members of the Alabama State Board of Education; WAYNE TEAGUE, in his official capacity as Superintendent of the Alabama State Board of Education; THE BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY; DAN C. ALEXANDER, DR. NORMAN BERGER, HIRAM BOSARGE, NORMAN G. COX, RUTH F. DRAGO, and DR. ROBERT GILLIARD, in their official capacities as members of the BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY; DR. ABE L. HAMMONS, in his official capacity as Superintendent of the BOARD OF EDUCATION OF MOBILE COUNTY; ANNIE BELL PHILLIPS, individually and in her official capacity as principal of MORNINGSIDE ELEMENTARY SCHOOL; JULIA GREEN, individually and in her official capacity as a teacher at MORNINGSIDE ELEMENTARY SCHOOL; BETTY LEE, individually and in her official capacity as principal of E.R. DICKSON Elementary SCHOOL; CHARLENE BOYD, individually and in her official capacity as a teacher at E.R. DICKSON ELEMENTARY SCHOOL; EMMA REED, individually and in her official capacity as principal of CRAIGHEAD ELEMENTARY SCHOOL; PIXIE ALEXANDER, individually and in her official capacity as a teacher at CRAIGHEAD ELEMENTARY SCHOOL;

Defendants.

PRELIMINARY STATEMENT

2. The Preliminary Statement contained in Plaintiffs' original complaint is supplemented by adding the following paragraph:

Plaintiffs, and the class they seek to represent, further bring this action seeking to enjoin the State Defendants and anyone acting in concert with them from implementing and enforcing certain state laws which provide for prayer in schools in violation of the Constitution of the United States of America and the Constitution of the State of Alabama.

JURISDICTION

3. The jurisdictional statement is amended by adding the following three sentences:

Declaratory relief prayed for in this action is authorized by 28 U.S.C. Sections 2201 and 2202. This Court has pendent jurisdiction over the claims arising under Article I, Section 3 of the Constitution of Alabama of 1901. The cause of action arose in Mobile County, Alabama.

DEFENDANTS

4. Subsection III of Plaintiffs' original Complaint, which identifies the Defendants, is supplemented by adding the following Defendants:

Defendant, FOB JAMES, is Governor of the State of Alabama. As Governor, he is vested, pursuant to Article V, Section 113, of the Constitution of Alabama of 1901, with supreme executive power of the state. Further, in addition to serving as an ex officio member of the State Board of Education, Alabama Code Section 16-3-2 (1975) mandates that the governor preside as president of the Board. As a Board member, Defendant JAMES is empowered to exercise general control and supervision over the public schools of the State. Defendant JAMES is sued only in his official capacities as Governor of the State of Alabama and ex officio member of the State Board of Education.

Defendant, CHARLES GRADDICK, is the Attorney General for the State of Alabama. As Attorney General he is required by Amendment 111, Section 137 of the Constitution of Alabama of 1901 and Alabama Code Section 36-15-1(3) to defend suits brought against any State school board or State board of education or against any county or city school board or board of education. Defendant GRADDICK is made a party defendant and is sued only in his official capacity as Attorney General.

Defendants, TYSON, CREEL, CHERRY, HIGGINBOTHAM, POOLE, MARTIN, ALLEN and ROBERTS, are all members of the State Board of Education. Collectively with the Governor, they are empowered to exercise general control and supervision over the public schools of the State. These members are sued only in their official capacities.

Defendant, WAYNE TEAGUE, is the State Superintendent of Education. As Superintendent, he serves, pursuant to Alabama Code Section 16-4-1, as Chief Executive Officer of the State Department of Education. He is further charged with the duty to enforce all laws, rules and regulations pertaining to education in the State of Alabama, Alabama Code Section 16-4-4. Defendant TEAGUE is sued only in his official capacity as State Superintendent of Education.

STATEMENT OF THE CASE

5. Plaintiffs' statement of the case is augmented by the addition of the following paragraphs to be enumerated as paragraphs 32(a) through 32(o):

32. (a) In 1978, the Alabama legislative body promulgated an act, (Alabama Code Section 16-1-20) though designated as allowing for a "period of silence for meditation," had as its primary legislative purpose the establishment of religion.

32. (b) Pursuant to the grant of authority contained in Alabama Code Section 16-1-20, Defendants GREEN, BOYD and PIXIE ALEXANDER have led their classes in religiously based prayer activities.

32. (c) On information and belief, many of the teachers employed by the Mobile County School Board have, under the authority granted by Section 16-1-20, led their class in religiously based prayer activities.

32. (d) In 1981, the Alabama legislative body amended Section 16-1-20 (16-1-20.1 1981) to clarify their intent to

have prayer as part of the daily classroom activity. This amendment expressly gave the teachers the unfettered discretion of leading the class in "a period of silence" or a "voluntary prayer".

32. (e) The expressed legislative purpose in enacting Section 16-1-20.1 (1981) was to "return voluntary prayer to (Alabama's) public schools".

32. (f) Pursuant to the grant of authority contained in Section 16-1-20.1, Defendants GREEN, BOYD and PIXIE ALEXANDER, have led their classes in religiously based prayer activities.

32. (g) On information and belief, many of the teachers employed by the Mobile County School Board have, under the authority granted by Section 16-1-20.1, led their class in religiously based prayer activities.

32. (h) In 1982—during a Special Session of the Alabama Legislature called by Defendant JAMES for the purpose of acting on a "prayer amendment" to be introduced by him—the State Legislature passed a Bill (subsequently signed by Defendant JAMES), denominated as S.B. 61, 1982 and which provided:

> To prescribe a period of time in the public schools, not to exceed 15 minutes, for the study of the formal procedures followed by the United States Congress which study *shall* include the reading verbatim of one of the opening prayers given by either the House or Senate Chaplin at the beginning of the meeting of the United States House or Senate.
>
> BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
>
> Section 1. At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which said class is held *shall*, for a period of time not exceeding 15 minutes, instruct the class in the formal procedure

> followed by the United States Congress. The study *shall* include, but not be limited to, a reading verbatim of one of the opening prayers given by either the House or Senate Chaplin at the beginning of the meeting of the House or Senate. Any student may select an opening House or Senate prayer from the Congressional Record for use by the class. (Emphasis added.)

32. (i) During the same Special Session referenced in paragraph 32. (h) above, the State Legislature promulgated the following bill denominated as S.B. 8, 1982:

> To provide for a prayer that may be given in the public schools and educational institutions of this state.
>
> BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
>
> Section 1. From henceforth, any teacher or professor in any public educational institution within the State of Alabama, recognizing that the Lord God is one, at the beginning of any homeroom or any class, *may lead the willing students in the following prayer to God:*
>
> Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools. In the name of our Lord. Amen.

32. (j) The principal, if not sole, legislative purpose in enacting S.B. 61 and S.B. 8, was to advance religion in the public schools in the State of Alabama.

32. (k) S.B. 61 and S.B. 8 both became effective upon passage and approval by the Governor.

32. (l) The mandate of both S.B. 61 and S.B. 8 requires teachers to implement their provisions immediately upon the act becoming effective.

32. (m) Unless enjoined the Defendants plan to implement the provisions of S.B. 61 and S.B. 8 and advance religion in public schools in the State of Alabama.

32. (n) Plaintiffs JAMAEL AAKKI JAFFREE, MAKEBA GREEN and some of the members of the class they seek to represent are presently enrolled in summer school in Mobile County, Alabama.

32. (o) Plaintiffs and the members of the class they seek to represent have suffered and will continue to suffer immediate and irreparable injury unless Defendants are enjoined from further implementing and/or enforcing Alabama Code Sections 16-1-20, 16-1-20.1, S.B. 61 and S.B. 8.

CLAIM OF RELIEF

6. To the claim of relief averred in Plaintiffs' original complaint, the following claims of relief are added:

SECOND CLAIM OF RELIEF

The "Period of Silence" law found at Alabama Code Section 16-1-20 has the primary purpose and effect of fostering a belief in religion in violation of the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

THIRD CLAIM OF RELIEF

The "Voluntary Prayer" law found at Alabama Code Section 16-1-20.1 and the practice of the school prayer period violate both the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution.

FOURTH CLAIM OF RELIEF

The Compulsory Study Congress law marked as S.B. 61, 1982, found at Alabama Code Section ———, which requires the verbatim recitation of a prayer given by either the House or Senate Chaplin violates both the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution.

FIFTH CLAIM OF RELIEF

The Specific Prayer law marked as S.B. 8, 1982, found at Alabama Code Section ———, which authorizes teachers to lead their class in saying a specific prayer violates both the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution.

SIXTH CLAIM OF RELIEF

The "Period of Silence" law found at Alabama Code Section 16-1-20 has the primary purpose and effect of fostering a belief in religion in violation of both the Establishment Clause and Free Exercise Clause of Article I, Section 3 of the Constitution of Alabama of 1901.

SEVENTH CLAIM OF RELIEF

The "Voluntary Prayer" law found at Alabama Code Section 16-1-20.1 and the practice of the school prayer period violate both the Establishment Clause and Free Exercise Clause of Article I, Section 3 of the Constitution of Alabama of 1901.

EIGHTH CLAIM OF RELIEF

The Compulsory Study Congress law marked as S.B. 61, 1982, found at Alabama Code Section ——, which requires the verbatim recitation of a prayer given by either the House or Senate Chaplin, violates both the Establishment Clause and Free Exercise Clause of Article I, Section 3 of the Constitution of Alabama of 1901.

NINTH CLAIM OF RELIEF

The Specific Prayer law marked as S.B. 8, 1982, found at Alabama Code Section ——, which authorizes teachers to lead their class in saying a specific prayer violate both the Establishment Clause and Free Exercise Clause of Article I, Section 3 of the Constitution of Alabama of 1901.

PRAYER FOR RELIEF

7. The Prayer for Relief found in both Plaintiffs' original complaint and their first amended complaint, is augmented by adding the following paragraphs:

n. That the Court preliminarily and permanently enjoin the Defendants, their employees, agents, and successors in office from enforcing or implementing in any way Alabama Code §§ 16-1-20, 16-1-20.1 and Senate Bills 61 and 8 and from authorizing the offering of prayer in public schools.

o. To enter a declaratory judgment declaring that Alabama Code §§ 16-1-20, 16-1-20.1 and Senate Bills 61 and 8 violate the First and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the Constitution of Alabama of 1901.

Respectfully submitted, this the 3rd day of June, 1982.

/s/ Ronnie L. Williams
RONNIE L. WILLIAMS
103 Dauphin Street, Suite 716
Mobile, Alabama 36602
(205) 432-6985

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title Omitted]

[Filed Jul. 27, 1982]

ANSWER OF DEFENDANTS TYSON, CREEL, CHERRY, HIGGINBOTHAM, POOLE, MARTIN, ALLEN, AND ROBERTS, ELECTED MEMBERS OF THE ALABAMA STATE BOARD OF EDUCATION; AND WAYNE TEAGUE ALABAMA STATE SUPERINTENDENT OF EDUCATION

Come now the above-named Defendants and for Answer to the Complaint previously filed in the above-styled case, these Defendants say as follows:

FIRST DEFENSE

1. The District Court lacks jurisdiction under 28 U.S.C. § 1343(3) over these Defendants in that it affirmatively appears from the Complaint that these Defendants have not deprived the Plaintiffs of any rights, privileges or immunities secured to them by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

SECOND DEFENSE

2. The District Court lacks jurisdiction over these defendants under the provisions of 28 U.S.C. § 1343(4).

THIRD DEFENSE

3. The District Court lacks jurisdiction over these Defendants in that as a matter of law there is no case

or controversy existing between the Plaintiffs and these Defendants.

FOURTH DEFENSE

4. The District Court lacks jurisdiction over these Defendants under 28 U.S.C. §§ 2201 and 2202 in that as a matter of law there is no "actual controversy" existing between the Plaintiffs and these Defendants.

FIFTH DEFENSE

5. The Complaint fails to state against these Defendants a claim under 42 U.S.C. § 1983 upon which relief may be granted.

SIXTH DEFENSE

6. The Court lacks jurisdiction over these Defendants in that the allegations and claims made against the members of the Alabama State Board of Education and the State Superintendent of Education are made against these Defendants solely in their official capacities, and the nature of such claims reveals that these claims represent an action against the State of Alabama which has not consented to be sued nor waived its immunity from suit.

SEVENTH DEFENSE

7. The Complaint fails to state a claim against these Defendants under 28 U.S.C. §§ 1983 and 1988 upon which relief may be granted in that the claims and allegations made against the Defendant officials of the State of Alabama are by their nature claims against the State and the State of Alabama is not a person within the meaning of § 1983 or § 1988.

EIGHTH DEFENSE

8. The Complaint fails to state a claim against these Defendants upon which relief may be granted in that these Defendants are not real parties in interest.

NINTH DEFENSE

For further Answer to the Complaint, these Defendants state as follows:

9. With respect to the paragraph denominated "*Preliminary Statement*" of the original Complaint, no response is required of these Defendants.

10. With respect to paragraph 1 of the original Complaint, these Defendants deny that this Court has jurisdiction under 28 U.S.C. §§ 1343(3) and (4). These Defendants further deny that this court has jurisdiction over them under 28 U.S.C. §§ 2201 and 2202. These Defendants further deny that the Court has jurisdiction of this action such that the Court is authorized to grant any relief against these Defendants under the remedial provisions of 42 U.S.C. §§ 1983 and 1988.

11. With respect to paragraphs 2-5 of the original Complaint, these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

12. With respect to paragraphs 6-14 of the original Complaint, no response is required of these Defendants.

13. With respect to paragraphs 15-32 of the original Complaint, these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

14. With respect to paragraphs 33-35 of the original Complaint, no response is required of these Defendants.

15. With respect to that section of the original Complaint denominated "VI. PRAYER FOR RELIEF" these Defendants state that as against these Defendants, the Plaintiffs are not entitled to any relief.

16. With respect to the Amended Complaint filed by Plaintiffs under the provisions of Rule 15(a) of the Federal Rules of Civil Procedure, these Defendants deny the

allegations contained in the Amended Complaint and for further Answer deny that this action is properly certifiable as a class action and further deny that as against these Defendants Plaintiffs are entitled to any relief sought through the Amended Complaint.

17. With respect to paragraph 1 of the Second Amended Complaint, these Defendants deny that the Plaintiff is entitled to amend the Complaint and for further Answer state that with respect to paragraph 1 of the Second Amended Complaint, no further response is required.

18. With respect to paragraph 2 of the Second Amended Complaint, these Defendants state that they are not charged with nor do they have under the laws of Alabama any authority to implement or enforce legislation which grants discretion to a classroom teacher to determine whether that teacher will do the act complained of.

19. With respect to paragraph 3 of the Second Amended Complaint, these Defendants deny that 28 U.S.C. §§ 2201 and 2202 afford the Court any basis for jurisdiction over these Defendants in that there is no actual controversy existing between the Plaintiffs and these Defendants. These Defendants further deny that this Court has any pendent jurisdiction over claims arising under Article I, Section 3 of the Constitution of Alabama of 1901.

20. With respect to paragraph 4 of the Second Amended Complaint, no response is required of these Defendants concerning the subparagraphs relating to Governor Fob James and Attorney General Charles Graddick.

21. With respect to the subparagraph of paragraph 4 of the Second Amended Complaint which relates to the Defendants Tyson, Creel, Cherry, Higginbotham, Poole, Martin, Allen and Roberts, these Defendants admit that they are members of the Alabama State Board of Educa-

tion. These Defendants further admit that the State Board of Education is empowered to exercise general control and supervision over the public schools of the State of Alabama. These Defendants deny any inference that they as individual Board Members have any authority to exercise any control and supervision over the public schools of this State.

22. With respect to paragraph 4 of the Second Amended Complaint as it relates to Defendant Teague, this Defendant admits that he is the State Superintendent of Education and the Chief Executive Officer of the Alabama State Department of Education. This Defendant further admits that he is charged with the duty to enforce all education laws of the State of Alabama and rules and regulations of the Alabama State Board of Education pertaining to the public schools of the State of Alabama. This Defendant denies any inference that he is given any authority to enforce laws, rules or regulations which by their terms grant permissive or discretionary authority to other individuals.

23. With respect to paragraph 32(a) of the Second Amended Complaint, these Defendants admit the existence of Code of Alabama (1975) § 16-1-20. The remaining allegations are denied.

24. With respect to paragraphs 32(b) and (c) of the Second Amended Complaint, these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

25. With respect to paragraph 32(d) of the Second Amended Complaint, these Defendants deny the allegations contained therein.

26. With respect to paragraph 32(e) of the Second Amended Complaint, these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

27. With respect to paragraphs 32(f) and (g) of the Second Amended Complaint, these Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations contained therein.

28. With respect to paragraph 32(h) of the Second Amended Complaint, these Defendants state that the allegations contained in the paragraph are moot based on the action of the Governor vetoing the referenced legislation.

29. With respect to paragraph 32(i) of the Second Amended Complaint, the allegations contained therein are admitted.

30. With respect to paragraph 32(j) of the Second Amended Complaint, these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

31. With respect to paragraph 32(k) of the Second Amended Complaint, these Defendants admit that Senate Bill 8 became effective upon its passage and approval by the Governor and for further answer state that Senate Bill 61 was vetoed by the Governor.

32. With respect to paragraph 32(l) of the Second Amended Complaint, these Defendants state that the provisions of Senate Bill 8 do not require teachers to implement the provisions thereof but that the provisions thereof are permissive merely.

33. With respect to paragraph 32(m) of the Second Amended Complaint, these Defendants deny the allegations contained therein.

34. With respect to paragraphs 32(n) and (o) of the Second Amended Complaint, these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

35. With respect to the sections of the Second Amended Complaint denominated "CLAIM OF RELIEF"

and "PRAYER FOR RELIEF," these Defendants deny that as against these Defendants the Plaintiffs are entitled to any relief sought.

36. For further Answer to the Complaint, these Defendants state that any allegation not specifically admitted herein is denied.

/s/ Charles S. Coody
CHARLES S. COODY

Address:

State Department of Education
State Office Building
Montgomery, AL 36130-3901
(205) 832-6578

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

[Title Omitted]

[Filed Jul. 28, 1982]

ANSWER

COMES NOW Fob James, Governor of Alabama, and for answer to the Plaintiff's Complaint, First Amended Complaint and Second Amended Complaint, and each Cause of Action sought to be stated therein, says as follows:

The allegation contained in the Plaintiff's *Preliminary Statement* is denied.

1. Paragraph I of the Plaintiff's Complaint asserting this Court's jurisdiction over the subject matter of his Complaint is emphatically denied by the Governor of Alabama.

2., 3., 4., 5. The Governor of Alabama is without knowledge sufficient to form a belief as to the truthfulness of the allegations contained in Paragraphs 2. through 5., inclusive, of the Plaintiff's Complaint.

6. Admitted.

7. Admitted.

8. Admitted.

9., 10., 11. The Governor of Alabama is without knowledge sufficient at this time to form a belief as to the truthfulness of the allegations contained in Paragraphs 9, 10, and 11 of the Plaintiff's Complaint.

12. The Governor of Alabama admits that Julia Green is a teacher in the public school system in Mobile County,

Alabama. The Governor of Alabama is without knowledge sufficient to form a belief as to the truthfulness of the allegation that Julia Green teaches a class for students with special learning disabilities and has supervisory responsibilities over two teacher's aids assigned to this class. The remainder of the Plaintiff's allegations in Paragraph 12 of his Complaint are vague and speculative, and therefore denied.

13. The governor of Alabama admits that Charlene Boyd is a teacher in the public school system in Mobile County, Alabama. The Governor of Alabama has knowledge insufficient to form a belief as to the truthfulness of the allegation that Charlene Boyd teaches a kindergarten class at E. R. Dickson Elementary School. The remainder of the Plaintiff's allegations in Paragraph 13 of his Complaint are vague, speculative, and inaccurate, and therefore denied.

14. The Governor of Alabama admits that Pixie Alexander is a teacher in the public school system in Mobile County, Alabama. The Governor is without knowledge sufficient at this time to form a belief as to the allegation that Pixie Alexander is assigned to a second grade class at Craighead Elementary School. The remainder of the Plaintiff's allegations in Paragraph 14 of his Complaint are vague, speculative and inaccurate, and therefore denied.

15., 16. The allegations by the Plaintiff in Paragraph 15 and 16 of his Complaint are denied.

17., 18., 19. The allegations contained in Paragraphs 17, 18, and 19 of the Plaintiff's Complaint are vague, speculative and inaccurate, and therefore denied.

20. The Governor is without knowledge sufficient at this time to form a belief as to the truthfulness of the allegations contained in Paragraph 20 of the Plaintiff's Complaint.

21., 22., 23. The allegations contained in Paragraphs 21, 22, and 23 of the Plaintiff's Complaint are vague, speculative and inaccurate, and therefore denied.

24., 25., 26. The Governor of Alabama has knowledge insufficient at this time to form a belief as to the truthfulness of the allegations contained [in] Paragraphs 24, 25, and 26 of the Plaintiff's Complaint.

27. The allegations contained in Paragraph 27 of the Plaintiff's Complaint are vague, speculative and inaccurate, and therefore denied.

28. The allegations contained in Paragraph 28 of the Plaintiff's Complaint are vague, speculative and inaccurate, and therefore denied.

29., 30., 31., 32. The allegations contained in Paragraphs 29-32, inclusive, of the Plaintiff's Complaint are denied.

3. The Governor of Alabama hereby incorporates by reference his answer to the allegations contained in the *Preliminary Statement*, and Paragraphs 1 through 32, inclusive, of the Plaintiff's Complaint, set out above.

34., 35. The allegations contained in Paragraphs 34 and 35 of the Plaintiff's Complaint are denied.

ANSWER TO THE PLAINTIFF'S FIRST AMENDED COMPLAINT

1. The allegations contained [in] Paragraph 1 of the Plaintiff's Amended Complaint is denied.

2., 3., 4. The allegations contained in Paragraphs 2, 3, and 4 of the Plaintiff's First Amended Complaint are vague, speculative and inaccurate, and therefore denied.

ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

2. The supplemental *Preliminary Statement* in Paragraph 2 of the Plaintiff's Second Amended Complaint is denied.

3. Paragraph 3 of the Plaintiff's Second Amended Complaint is denied.

4. Paragarph 4 of the Plaintiff's Second Amended Complaint is admitted.

5. Paragraph 5 of the Plaintiff's Second Amended Complaint is answered as hereinafter set out, in Paragraphs 32(a) through 32(o);

32(a). The allegations contained in Paragraph 32(a) of the Plaintiff's Second Amended Complaint are denied.

32(b), 32(c). The allegations contained in Paragraphs 32(b) and 32(c) of the Plaintiff's Second Amended Complaint are denied, as the Defendants Green, Boyd, and Pixie Alexander have led their classes in prayer pursuant to the authority of God recognized by the Declaration of Independence, the Constitution, and the First Amendment thereto, as well as by Alabama Code § 16-1-20.

32(d). Paragraph 32(d) of the Plaintiff's Second Amended Complaint is admitted.

32(e). Paragraph 32(e) of the Plaintiff's Second Amended Complaint is admitted.

32(f), 32(g). The allegations contained in Paragraphs 32(f) and 32(g) of the Plaintiff's Second Amended Complaint are denied, as authority to pray proceeds from God, which authority is recognized by the Declaration of Independence, the Constitution, the First Amendment thereto, as well as Code of Alabama § 16-1-20.1.

32(h). The allegations contained in Paragraph 32(h) of the Plaintiff's Second Amended Complaint are denied.

32(i). The allegations contained in Paragraph 32(i) of the Plaintiff's Second Amended Complaint are based on an alleged statute which is not the law of Alabama, and therefore denied.

32(j)(k)(l)(m). The allegations contained in Paragraphs 32(j), 32(k), 32(l) and 32(m) are denied.

32(n). The Governor of Alabama is without knowledge sufficient at this time to form a belief as to the truthfulness of the allegations contained in Paragraph 32(n) of the Plaintiff's Second Amended Complaint.

32(o). The allegations in Paragraph 32(o) of the Plaintiff's Second Amended Complaint are denied.

ANSWER TO SECOND CLAIM OF RELIEF

The allegations contained in the Plaintiff's Second Claim of Relief in his Second Amended Complaint are denied.

ANSWER TO THIRD CLAIM OF RELIEF

The allegations contained in the Plaintiff's Third Claim of Relief in his Second Amended Complaint are denied.

ANSWER TO FOURTH CLAIM OF RELIEF

The allegations contained in the Plaintiff's Fourth Claim of Relief in his Second Amended Complaint are denied.

ANSWER TO FIFTH CLAIM OF RELIEF

The allegations contained in the Plaintiff's Fifth Claim of Relief in his Second Amended Complaint are denied.

ANSWER TO SIXTH CLAIM OF RELIEF

The allegations contained in the Plaintiff's Sixth Claim of Relief in his Second Amended Complaint are denied.

ANSWER TO SEVENTH CLAIM OF RELIEF

The allegations contained in the Plaintiff's Seventh Claim of Relief in his Second Amended Complaint are denied.

ANSWER TO EIGHTH CLAIM OF RELIEF

The allegations contained in the Plaintiff's Eighth Claim of Relief in his Second Amended Complaint are denied.

ANSWER TO NINTH CLAIM OF RELIEF

The allegations contained in the Plaintiff's Ninth Claim of Relief in his Second Amended Complaint are denied.

THE GOVERNOR OF ALABAMA'S FIRST AFFIRMATIVE DEFENSE

By the authority of the Most High God, Whose authority is recognized by the Declaration of Independence, the Constitution of the United States of America, the First Amendment thereto, and the Alabama Law respecting prayer in the schools, neither this Court nor any court has jurisdiction over the prayers of the people of God.

FOB JAMES, III
Attorney for Defendant

By: /s/ Fob James, III
FOB JAMES, III

[Certificate of Service Omitted in Printing]

[TESTIMONY FROM THE PRELIMINARY INJUNCTION HEARING AUGUST 2, 1982]

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[51] DONALD G. HOLMES,

the witness, called on behalf of the Plaintiffs, having been first duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Senator Holmes, will you state your name?

A Senator Donald G. Holmes, Calvin County State Senator, District 20.

Q How long have you been a state senator?

A Four years.

Q Four years?

A Yes, I served one term in the House, three years in the House of Representatives, and my first term in the State Senate.

Q When did that term begin in the State Senate?

[52] A 1979, right after the general election in 1978.

Q Are you familiar with the lawsuit at issue here today?

A Mr. Williams, I got the subpoena Friday morning and it read Fob James. I don't know, sir, your Honor, if it is concerning the Governor's bill or the one I introduced in 1981, but I read something about the lawsuit, yes.

Q All right, that is fine. It does, in fact, involve the Governor's bill and the one that you sponsored also. Okay.

Do you have a copy of the Governor's bill before you?

A No, I do not.

MR. COODY: No objection to the authenticity of the document, your Honor.

THE COURT: Mr. Shirling, do you have any objection to the certified copy of the act?

MR. SHIRLING: Is this a copy?

THE COURT: The original is on file with the Court, the certification.

MR. SHIRLING: The same objection.

THE COURT: He did not object.

MR. SHIRLING: I thought you said you objected to the authenticity.

[53] MR. COODY: No, I did not.

MR. SHIRLING: No objection.

Q Senator Holmes, I would like to show you the Senate Bill Eight, Act 82735, and ask you a few questions about them, please, sir.

Have you had an opportunity to read over that particular bill?

A Yes.

Q Are you familiar with that bill?

A Yes, I read it several times before when it came on the floor of the State Senate for debate.

Q Were you present during the debate of that particular bill?

A Yes, I was.

Q Could you give the Court the flavour [*sic*] of that debate basically?

A Mr. Williams, I voted for the Voluntary Prayer Bill, Senate Bill Eight as enrolled and enacted just as I supported and voted for mine, the one I wrote and authored in 1981.

I do recall vaguely some debate on the bill when it came up on the Senate Floor.

Q Could you give the Court the flavour of that debate basically?

[54] MR. COODY: We object on the grounds of hearsay. There is no maintained or kept formal legislative history for the State of Alabama. While we have the deepest respect for Senator Holmes, his ability and recollection of what he would testify to, remains to be hearsay.

THE COURT: I think he can testify as to what he said and did.

MR. COODY: Yes, sir. I'm talking about the debate of the other members of the Legislature.

Q Senator Holmes, did you speak on the Senate Floor either opposing or in favor of this particular bill?

A Yes, sir, I spoke in favor of this bill just like I did mine in 1981.

Q Could you give to the Court to the best of your recollection the content of your speech before Senate body?

A On this particular bill here, sir?

Q Yes, Senate Bill Eight.

A I mentioned during the debate in question there were just a few and, your Honor, it is hard to recall seven or eight months ago, but I'll do my very best.

In regard to the Voluntary Prayer Bill that Governor James put before the Legislature at that time, we had discussed the bill that I had passed in 1981 and also in [55] the direction of the bill that the Governor had introduced in the Special Session, and I think—I do not recall absolutely—but the bill was amended upon the floor.

Now whether we had the words "may," "may pray and may lead," there was question by the other senators about that.

Q Okay, Senator. Was there any question in your mind as to the purpose of this particular bill, Senate Bill Eight?

MR. SHIRLING: Judge, I object to what his intention was or his understanding or the purpose of the document.

The document will speak for itself.

THE COURT: I agree with that. The public record of the regular session reports the point of personal privilege and apparently Mr. Holmes made a statement which is a matter of public record, is that what you are driving at?

MR. WILLIAMS: No, your Honor, that deals with Mr. Holmes' 1981 bill.

Right now we are concerned with Senate Bill Eight, the bill introduced by the Governor.

Q Do you recall who sponsored Senate Bill Eight in the Senate?

A Senator Callahan.

[56] Q Did Senator Callahan make any remarks in introducing this bill to the Senate?

MR. COODY: We would object to the contents of that.

THE COURT: I don't think he has yet asked him that.

MR. COODY: He has not.

A Sir?

THE COURT: He has not asked you what Senator Callahan said. He asked you if he made any remarks.

A Yes, he did.

Q Senator, why did you support this particular bill?

A Why?

Q Yes.

A Because I believe in the concept of voluntary prayer in our public schools. There are many reasons for that and I will do my very best, sir, to give you the straightforward answer that I come here today to give you.

Q And that is exactly what we want. So when you voted for this particular bill, your main purpose in voting for this bill was to support the concept of voluntary prayer in public schools, is that correct?

MR. SHIRLING: I object to leading the witness. It is a witness he called and he is testifying [57] at this point, your Honor.

THE COURT: Try not to lead your witness.

MR. WILLIAMS: Your Honor, Senator Holmes is called not necessarily as a witness on behalf of the plaintiffs.

THE COURT: Nobody makes anybody their witness for the purpose of interrogation. If you feel you are not getting the answers that you think you are entitled to, then you may lead but until there is a showing that

it is necessary, I don't think we need to engage in that. Let the witness testify.

MR. WILLIAMS: Okay. Thank you.

Q So what was your primary purpose in voting for this bill, Senator Holmes?

MR. COODY: We object. I believe the Court has ruled he cannot state his intent at the particular time he voted.

THE COURT: I think he can express his feelings of why he did what he did. Go ahead.

A Mr. Williams, I voted for the Voluntary Prayer Bill that Governor James has because I am concerned and I support voluntary prayer as many people throughout the State of Alabama do, and I was the author of Voluntary Prayer or Silent Meditation Prayer in 1981 and I have not changed my [58] position on that.

Q Did you have any reservations about Senate Bill Eight, any reservations at all?

A Well, sir, I am not a constitutional lawyer and I'm not a lawyer, but in my research in the prior years, correct me if I'm wrong, there was some thought that several of us may be talked about on the prescribed prayer or a stated prayer, but after the amendment was put into the bill on the Senate Floor there was the use of the word "may" in those cases as we see in the bill and I had no reservations, no, sir.

Q Do you have before you, Senator Holmes, the bill that you mentioned you co-sponsored in 1981?

A I did not co-sponsor. I was the prime sponsor.

Q Do you have a copy of that particular bill?

A Yes, sir, I do.

Q Senator Holmes, could you read for the record, please, the content of that particular bill, 16-1-20.1?

A I have the copy of the law part insert. Shall I read the Section One there? Is that what you want me to do?

Q Yes.

A "At the commencement of the first class of each day in all grades and all public schools, the teacher in

charge of the room in which each such class is held may announce [59] that a period of silence not to exceed one minute in duration shall be observed for meditation or voluntary prayer and during any such period no other activity shall be engaged in."

Q And you say you were the sponsor of that particular bill?

A Yes, I was. Yes, I am.

Q Why did you sponsor that particular bill?

What was the motivating factor behind your sponsoring that bill?

A Certainly I'm motivated by many factors. My heritage, my upbringing, if you will, if I can use that word, Judge, and also the people in the State of Alabama and the people in my district.

Since the 1960's I've seen legislation or a lot of talk about prayer in schools. I had prayer in school when I was in the Sixth Grade. I still have my Sixth Grade Bible that my teacher gave me. And during the course of time in talking with people throughout my district and other parts of Alabama, several people asked me my opinion. I told them and they said, "Why don't you introduce a Voluntary Prayer Bill?"

At that particular time—I do stand corrected. At that time all we had was a silent meditation law on the books and so I started working, investigating to the best of [60] my ability with the limited resources I do have at my disposal, in trying to learn and hopefully draft a good piece of legislation for the State of Alabama concerning voluntary prayer.

Q Do you see any difference other than the specific prayer mentioned in Governor James' bill and the bill you sponsored back in 1981?

A There is some difference, yes. He has the worded prayer written out and my bill only says "may announce, may have prayer or silent meditation."

Q But other than the specific prayer in the Governor James' bill, is there any difference in your bill of 1981 and Senate Bill Eight?

MR. SHIRLING: I object to any difference. He has asked him his opinion of what the difference was and now the difference between the two bills. The documents will speak for themselves.

THE COURT: I think that's correct.

Q Okay, Senator Holmes, do you know who sponsored your bill in the Alabama House in 1981?

A My good friend and colleague Miss Shelberdine Ward [phonetical], I believe.

Q Was that done before you introduced your bill or after or do you recall?

[61] A I'll have to give you background or history on that, if you like.

Q That will be fine.

A Like I said, I started working on the bill and drafting the legislation and I started in about November. I had a meeting with some people at the Capitol at my disposal and at my request to come and talk with me and discuss voluntary prayer legislation.

We met on December 10 at 2 p.m. at the Capitol and we drafted the legislation and we re-drafted and looked over some other verbiage in the language of the other states and some of the other court decisions and opinions, and then I wrote a letter to the Governor, Governor Fob James, and before that on December the 4 and told him my interest in the Voluntary Prayer Bill in our public schools and that I would like his help and support from the Governor's Office, and any support that he may give me as far as legislative investigation and research.

And I told him that I intended to introduce the bill in the 1981 regular session and the Governor did reply back to me stating that he supported my bill and would be glad to help me any way and would like to include it in his administrative program for the upcoming legislation.

Certainly I was the sponsor in the Senate since I [62] was the author and drafter and someone asked Mrs. Ward to introduce it in the House.

Q Okay. Thank you. Do you recall whether or not you requested what is known as a point of personal privilege when you introduced your 1981 bill?

A I do recall that I did, yes.

Q I would like to show you a copy of that point of personal privilege and I would like to see if you recall that. [Handing]

It is a pretty bad copy but can you make out what is on there?

A Yes, sir, I can make out some of it, yes.

Q Can you read it well enough to read it to the Court, please?

A Yes. The point of personal privilege, "Mr. Holmes requested that the following statement regarding passage in both houses of his bill, Senate Bill Sixteen be spread upon the general, to wit, Mr. President and colleagues of the Senate, I have just received word that the Alabama House of Representatives has passed Senate Bill Sixteen that I introduced in this body in regard to voluntary prayer in public schools. Gentlemen, by passage of this bill by the Alabama Legislature our children in this state will have the opportunity of sharing in the spiritual heritage of this [63] state and this country. The United States as well as the State of Alabama was founded by people who believe in God. I believe this effort to return voluntary prayer to our public schools for its return to us to the original position of the writers of the Constitution, this local philosophies and beliefs hundreds of Alabamians have urged my continuous support for permitting school prayer. Since coming to the Alabama Senate I have worked hard on this legislation to accomplish the return of voluntary prayer in our public schools and return to the basic moral fiber. I strongly urge the Governor to sign that legislative mandate soon, even though this is a far cry from where this country and state stood years ago, it is a beginning and a step in the right direction."

This is a bad copy and this is the best I can do.

Q Thank you. You did very well. So from that point of personal privilege we say the purpose of that is to return voluntary prayer to public schools, the gist of your point of personal privilege is basically to return voluntary prayer into public schools, is that correct?

A Well, I was very happy when the Alabama House of Representatives passed Senate Bill Sixteen and, therefore, clearing both houses of the Legislature and being sent to the Governor. You are asking me if I was supporting voluntary [64] prayer, yes, sir, and I still am.

Q Did you have any non-religious or secular purpose for proposing this particular bill, Senate Bill Sixteen, the 1981 bill?

MR. SHIRLING: Judge, he is asking for a legal conclusion on the part of this witness asking for a purpose and that is a constitutional catch phrase and he is seeking this Court to render an opinion or this opinion to render an opinion on and if he is going to show a secular purpose in that, that is his job to do it or not do it through evidence and not through the opinion of a particular witness.

THE COURT: Well, I don't know about the nature of the objection. I think the statute itself speaks for what it was, voluntary prayer in the school.

And now you have a secular purpose for voluntary prayer. You either have voluntary prayer or you don't have voluntary prayer, and I never knew prayer to be secular.

MR. WILLIAMS: No, but many times, with all due respect, Judge, pieces of legislation have been passed in the past with a religious context but for a secular purpose or stated secular purposes having the effect of a religious purpose, but I'm trying to find [65] out from this witness whether or not there is any other purpose other than his stated purpose of returning voluntary prayer to public schools, whether any other purpose existed at this particular time.

THE COURT: Can you answer that?

Q Whether you had any other purposes other than, as you stated, to return voluntary prayer to public schools, did you have any other purpose in sponsoring this particular legislation?

MR. SHIRLING: I would again object on the grounds that the document speaks for itself. The point of privilege that he has already introduced into evidence states his reason behind what has been done and these documents are sufficient at this point to answer that question.

THE COURT: I overrule. If he can answer the question I will let him answer whether he had any other purpose in mind.

A No, I did not have no other purpose in mind.

MR. WILLIAMS: Okay. Thank you, sir.

THE COURT: Let me interject here. It is your conception of the nature of the bill that was introduced that there was specified what any prayer would be?

THE WITNESS: You're asking me if I thought [66] there might be a specified prayer, your Honor?

THE COURT: I said was there any specification in the bill that you introduced or in the method in which you introduced that would set the tone of such prayer that was voluntarily given.

THE WITNESS: No, sir. My intentions or in thinking and researching, it was to draft a piece of legislation as the bill is in final form and passed into law completely voluntary with the meditation which is not necessarily a religious act or a prayer, but it could be in word or thought. It was very permissive and nothing mandatory upon the teacher nor the children.

MR. WILLIAMS: Okay, thank you, Senator Holmes. That will be all.

THE WITNESS: May I leave?

MR. COODY: I have a few questions.

Your Honor, before proceeding I would like to point out that I am proceeding on the basis that the Court will entertain the basis for the summary judgment at a later date.

CROSS EXAMINATION

BY MR. COODY:

Q Senator, one thing I think has been skipped over in your bill. Does it not require only one thing and that is [67] superior to silence, is that correct?

A No, sir, my bill does not require anything. It says, "May announce that a period of silence—

Q All right, sir. But the teacher cannot under your bill say a prayer, is that your statement about that?

A That's my judgment about the bill.

Q So anything that is done is going to be done silently?

A What do you mean, by the teacher or the students?

Q Well, by the students.

A It may be silently or it may not.

Q Senator, in your judgment did this statute contain any provision which would require the State Board of Education or the State Superintendent to enforce or implement it?

A Nothing in this bill that I passed, the one I wrote and passed, no.

Q One final question. Senator, in your talking to your constituents and other people in the state, did you find that there was any misunderstanding on their part that led them to conclude that they were prohibited from saying a prayer in school?

A State that again, please?

Q In your conversations with your constituents or [68] other people throughout the state, did you find that there was a misunderstanding on their part that led to a belief or a fear that they were prohibited from saying a prayer in school?

A Yes.

MR. WILLIAMS: Objection, your Honor. It calls for a hearsay conclusion.

MR. COODY: He answered the question, Judge.

THE COURT: I think he could give the underlying information that developed the position that he took in regard to the matter, and that's what I perceive that he is doing.

Q And, therefore, Senator, was part of your intention in passing this law or presenting this law to the Legislature for passage to tell the people in the state that there is nothing wrong if you want to be in a school building and say a prayer?

A That was my intention with the bill, that they may do that.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q Senator, did the earlier bill, the bill that you amended, 16-1-20, did that bill not give that same indication to teachers and students?

[69] A I'm sorry, I don't remember 16—what?

Q Your bill amended an earlier bill that provided for silent meditation, is that correct?

A Yes, if you are referring to the code, that's all we had on the books at that time, it was silent meditation, one minute.

Q That's correct.

A Okay.

Q The only thing your bill changed was the voluntary prayer aspect, is that correct?

A It added the word "or" O-R "voluntary prayer".

MR. WILLIAMS: Okay. Okay. Thank you.

RECROSS EXAMINATION

BY MR. COODY:

Q Senator, the silent meditation statute, do you recall whether or not it has the word "shall," "The teacher shall announce," and did not your bill change that to "may announce"?

A Sir, I think I remember that but I would have to go back and look at the code myself. I don't have those notes in front of me.

(The Court handing)

A Yes, it has "shall" and we put the word "may".

[70] CROSS EXAMINATION

BY MR. SHIRLING:

Q Senator, I'm Bob Shirling and I represent the people who seek to intervene in this lawsuit saying their rights are being affected by what is going on between the man that brought the suit and the people that he sued.

In your testimony here today you said that you did a certain amount of research.

A Yes, sir.

Q With regard to prayer in the schools and the basis upon which this country was founded, is that correct?

A Yes, sir.

Q I notice that in your Point of Personal Privilege it has been introduced into evidence here and you say that a belief in God and you have a capital G.

Is there any particular reason why you have a capital G there?

A I think it should be capitalized.

Q Why do you think it should be capitalized?

A Surely, sir, I'm a Christian and I believe in God and he is a supreme being.

Q Is there any difference in the God that you are addressing your Point of Personal Privilege to and the god that was addressed in the research that you did, that the [71] founding forefathers based their belief on?

A Our forefathers have the same god I have. That's the only way I know how to answer that.

Q How is the Senate opened each session?

A Just like the U.N., Congress and Supreme Court and other places, with a prayer everyday.

Q How is that done, by a particular person or directed to a particular person, how is that handled?

A Each day the Lieutenant Governor opens the session when the Senate comes in and the Lieutenant Governor and we as senators may have guests and invite ministers or preachers all over the State of Alabama to come and be our guest and open the Alabama Senate with a prayer.

Q Is there any law that says that the Senate has to be opened with a prayer?

A Not to my knowledge, no, sir.

Q Is anyone required to pray?

A No. We sure need it.

Q Have you ever noticed any ostracism or criticism of any particular person who may or may not pray in the Senate?

A Not a bit. I felt very strong that we have tens of thousands of school children coming down there a day and these folks are going to be our leaders someday and we have the American flag and I think we should be out in the front [72] and let these folks see, you know, hopefully statesmen and leaders they have in Montgomery and also in Washington, but there is no requirement.

Q I believe you stated you had been a member of the State House of Representatives.

A Yes.

Q For how long?

A An unexpired term, three full regular sessions, three years.

Q How is the House of Representatives opened each session?

A Opened by prayer.

Q I say session, are you referring to each day?

A Each legislative day, yes, sir.

Q How is that conducted?

A In the same manner as—almost in the same manner as the Senate.

Q Have you noticed any criticism or ostracism of people in the House of Representatives who do pray or who do not pray?

A No, sir, I have not.
Q Is it mandatory that they do pray?
A No, sir.
MR. SHIRLING: Thank you, sir.

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[U.S. DISTRICT COURT, S.D. ALA.
PLAINTIFF'S EXHIBIT NO. 3 AUGUST 2, 1982]

SIGNING OF BILLS

The President of the Senate, in the presence of the Senate, after the reading thereof at length had been dispensed with by a two-thirds vote of a quorum of the Senate present, and immediately after their titles had been publicly read at length by the Secretary of the Senate, signed the foregoing bills, the titles of which are set out in the foregoing Message from the House.

POINT OF PERSONAL PRIVILEGE

Mr. Holmes requested that the following statement, regarding passage through both Houses of his Bill, S. B. 60, be spread upon the Journal, to-wit:

Mr. President and colleagues of the Senate. I have just received word that the Alabama House of Representatives has passed Senate Bill 60, that I introduced in this body, in regard to voluntary prayer in public schools.

Gentlemen, by passage of this bill by the Alabama Legislature, our children in this state will have the opportunity of sharing in their spiritual heritage of this state and this country.

The United States as well as the state of Alabama was founded by people with a belief in God.

I believe this effort to return voluntary prayer to our public schools, for it would return us to the original position of the writers of the Constitution. . . . that is, local philosophies and beliefs.

Hundreds of Alabamians have urged my continued support for permitting school prayer. Since coming to the Alabama Senate, I have worked hard on legislation to accomplish the return of voluntary prayer in our public schools and to return to basic moral fiber.

I strongly urge the Governor to sign this legislative mandate soon. Even though this is a far cry from where this country and state were many years ago, it is a beginning and a step in the right direction.